

1 of 53 DOCUMENTS

NEW JERSEY REGISTER  
Copyright © 2008 by the New Jersey Office of Administrative Law

VOLUME 40, ISSUE 9

ISSUE DATE: MAY 5, 2008

**RULE PROPOSALS**

**AGRICULTURE**

**DIVISION OF DAIRY AND COMMODITY REGULATION**

40 N.J.R. 2157(a)

**Reproposed Amendment: N.J.A.C. 2:69-1.11**

[Click here to view Interested Persons Statement](#)

**Commercial Fertilizer and Soil Conditioners**

**Commercial Values**

Authorized By: State Board of Agriculture and Charles Kuperus, Secretary,  
Department of Agriculture.

Authority: N.J.S.A. 4:9-15.26 and 4:9-15.33.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-141.

Submit written comments only by July 4, 2008 to:

Alfred W. Murray, Director  
Division of Marketing and Development  
N.J. Department of Agriculture  
P.O. Box 330  
Trenton, New Jersey 08625

The agency reproposal follows:

**Summary**

The Commercial Values rule, N.J.A.C. 2:69-1.11, was originally proposed on February 4, 2008 at 40 N.J.R. 773(a). The purpose of the original proposal was to change only the effective dates of the commercial values of primary plant nutrients, pursuant to N.J.S.A. 4:9-15.26 and 15.33. The values were not

proposed for change in the original proposal that changed only the dates to the period from July 1, 2007 to June 30, 2008.

The current values have been under continuing review, revealing a steady increase in the cost of the primary nutrient ingredients upon which commercial values are based, particularly in the last six months. For that reason, and in light of the timing relative to the growing season, this reproposal replaces the prior proposal, and proposes amendments to the dates and the values. The effective dates would change to reflect the period extending from July 1, 2008 through June 30, 2009. The values would increase for all three nutrients; nutrients from \$ 6.50 to \$ 7.50 per unit; available phosphoric acid from \$ 4.00 to \$ 5.50 per unit and soluble potash from \$ 4.00 to \$ 5.50 per unit. Until this reproposal becomes effective, the values now in place, which would not have been changed by the original proposal of February 4, 2008, continue. The penalties assessed against manufacturers for deficient fertilizers will be based on these values. The State Treasury will receive all unclaimed penalty fees.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

#### **Social Impact**

All consumers of fertilizers will have monetary protection when deficient fertilizers are detected. Manufacturers will exhibit more care in controlling their formulating process to avoid a penalty. Therefore, the proposed amendment will have a positive social impact.

#### **Economic Impact**

All consumers of fertilizer will be equitably compensated for their losses because these proposed values are accurately adjusted to current market prices. This compensation will be paid by the label guarantor of the deficient fertilizer. There is no increased cost to the Department of Agriculture by the proposal amendment. The proposed amendment will have a positive economic impact.

#### **Federal Standard Statement**

A Federal standards analysis is not required because the rulemaking requirements of the Director of the Division of Marketing and Development, New Jersey Department of Agriculture are dictated by the New Jersey Commercial Fertilizers and Soil Conditioner Law, *N.J.S.A. 4:9-15.26* and *15.33*, and are not subject to any Federal requirements or standards.

#### **Jobs Impact**

The proposed amendment increases the commercial values and confirms the continuation of the standards in the rule for the next fiscal year and does not result in the generation or loss of jobs in New Jersey.

#### **Agriculture Industry Impact**

Farmers rely on fertilizer nutrient values to assure expected crop yields. The updating of the fertilizer nutrient values will provide proper protection for the agricultural community when deficient fertilizers are found. The fertilizer nutrient values are used in calculating the penalties assessed on

manufacturers in order to compensate farmers for their crop losses.

### **Regulatory Flexibility Analysis**

Both large and small businesses, as defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., are affected by the proposed amendment in the values of the fertilizers and extending the effective dates of the values of the fertilizers. However, differing standards are not deemed necessary because the changes are not burdensome and they reflect the current market value of the nutrients. Furthermore, the nutrient values are used in setting the penalties of manufacturers for compensation to farmers, all of whom are considered small businesses under the Act, when they purchase products that do not meet the analysis as advertised. The amendment in that way provides some measure of protection to small businesses. No capital expenditures or professional services are necessary to comply with the proposed amendment.

### **Smart Growth Impact**

The Department believes that the proposed amendment will have a positive impact on the achievement of smart growth and the State's Development and Redevelopment Plan by protecting the economic viability of farms.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 2:69-1.11 Commercial values

(a) The State Board of Agriculture, pursuant to *N.J.S.A. 4:9-15.26*, determines the commercial values of primary plant nutrients to be:

1. Nitrogen: [\$ 6.50] **\$ 7.50** per unit;
2. (No change.)
3. Available phosphoric acid: [\$ 4.00] **\$ 5.50** per unit;
4. Soluble potash: [\$ 4.00] **\$ 5.50** per unit.

(b) These values shall be effective from July 1, [2005] **2008** through June 30, [2006] **2009**.